

MAINE STATE HARNESS RACING COMMISSION  
MINUTES OF MEETING  
SEPTEMBER 23, 2016

Conference Room, Gambling Control Board  
Department of Public Safety  
45 Commerce Drive, Augusta, Maine

Commission Members Present: William Varney, Chair, Gary Reed, William McFarland and Michael Graham

Commissioners Absent: Alex Willette

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier and Miles Greenleaf

**1. Call the Meeting to Order and Introductions:** William Varney, Chair

**2. Review and Approval of Written Decisions and Orders**

Commissioner Varney asked for a motion on the decision and orders for Steven Vafiades for 2014 MSHRC 07, 2015 MSHRC 0063 and 0065; decision and order for Frank Petrelli 2015 MSHRC 082; decision and orders for Ronald Cushing 2015 MSHRC 07, 096 and 097 and decision and orders for Howard Davis 2016 MSHRC 07 and 13. Commissioner McFarland made a motion to approve the decision and orders as written and stated by Commissioner Varney. Commissioner Graham seconded. Vote 4-0.

**3. Adjudicatory Hearings:**

- a. RE: Gregory Libbey, Complaint Number 2016 MSHRC 08.** Mr. Libbey is alleged to have violated MSHRC Rules Chapter 11 Section 8. Mr. Libbey is trainer of record for the horse "Philanthropist". A blood sample obtained from Philanthropist following the fifth race at Scarborough Downs on July 3, 2016 disclosed the presence of flunixin. Gregory Libbey was present and represented himself. AAG, Guay gave Mr. Libbey his oath. He also qualified the Commissioners. Mr. Libbey stipulated to being the trainer of record for the horse Philanthropist and that the horse raced at Scarborough Downs on July 3, 2016. Mr. Libbey did not admit to the violation. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Certificate of Analysis and Exhibit 8, ARCI Guidelines. Mr. Libbey did not object to the admission of the exhibits. AAG, Guay read into the record exhibit 7 which proves that the substance was in the horse. Mr. Libbey had no statement. AAG, Guay closed the hearing for deliberations. Commissioner Graham made a motion to find Mr. Libbey in violation of the rule. Commissioner McFarland seconded. Vote 4-0. AAG, Guay explained to Mr. Libbey about the mitigating circumstances. Mr. Jennings stated that this is a category C penalty and he would recommend a \$500 fine and loss of purse under Chapter 17. Mr. Libbey stated that he was asked by Dennis Violet to be the trainer for the day and that he does not know what the drug looks like. AAG, Guay closed the hearing for deliberations on the penalty phase. Commissioner Graham made a motion to a \$500 fine and the return of purse within 30 days. Commissioner Reed seconded. Vote 4-0.

- b. **RE: Michael Hitchcock, Complaint Number 2016 MSHRC 09.** Mr. Hitchcock is alleged to have violated MSHRC Rules Chapter 11 Section 8. Mr. Hitchcock is trainer of record for the horse "It's A Go". A blood sample obtained from It's A Go following the third race at Presque Isle Fair on August 1, 2016 disclosed the presence of diclofenac. Michael Hitchcock was present and represented himself. AAG, Guay gave Mr. Hitchcock his oath. The Commissioners were qualified. Mr. Hitchcock stipulated to being the trainer of record of the horse It's A Go and that the horse raced on August 1, 2016 at Northern Maine Fair and that the horse did have diclofenac in its system. AAG, Guay asked Mr. Hitchcock if he admits to the trainer responsibility rule. Mr. Hitchcock stated yes. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Certificate of Analysis and Exhibit 8, ARCI Guidelines. Mr. Hitchcock did not object to the 8 exhibits being entered. Mr. Jennings recommends under Chapter 17 Category C as a \$500 fine and loss of purse. AAG, Guay stated that the ARCI guidelines have not changed by April 2016. Mr. Hitchcock entered Licensee's Exhibit 1, Tube of Cream. There was no objection from Mr. Jennings. Commissioners examined the tube of cream. Mr. Hitchcock stated that he applied the cream to the horse's legs and did not know that diclofenac was in the cream. He trains 20 to 25 horses. AAG, Guay asked if there were any questions from the department or Commissioners. Commissioner McFarland stated to Mr. Hitchcock that his horse raced three days earlier and no positive test came of that. Do you recall if it was after that race? Mr. Hitchcock stated that he just bought the horse. The horse raced on Friday and the cream was put on the horses legs the next morning. AAG, Guay closed the hearing for deliberations. Commissioner Varney asked for a motion. Commissioner Graham made a motion to fine Mr. Hitchcock \$500 and the loss of purse to be paid within 30 days. Commissioner Reed seconded. Vote 3-1. Commissioner McFarland opposed.
- c. **RE: James Ramsdell Sr., Complaint Number 2016 MSHRC 12.** Mr. Ramsdell is alleged to have violated MSHRC Rules Chapter 11 Section 8. Mr. Ramsdell is trainer of record for the horse "Pembroke Jack B". A blood sample obtained from Pembroke Jack B following the third race at Presque Isle Fair on August 1, 2016 disclosed the presence of pyrilamine. James Ramsdell, Sr. was present and represented himself. AAG, Guay gave Mr. Ramsdell his oath. The Commissioners were qualified. Commissioner Varney recused himself because of a potential bias. AAG, Guay asked Mr. Ramsdell if he stipulates to being the trainer of record of the horse Pembroke Jack B and that the horse raced in the third race on August 1, 2016 at Northern Maine Fair and that the horse had pyrilamine in its system. Mr. Ramsdell stated yes. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer's License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Certificate of Analysis and Exhibit 8, ARCI Guidelines. AAG, Guay stated that Exhibit 8 is the current classification of ARCI Guidelines. Mr. Jennings stated that he recommends under Chapter 17, Category B, 1<sup>st</sup> Offense a 15 day suspension, \$500 fine and loss of purse. AAG, Guay asked Mr. Ramsdell if he had any mitigating circumstances. Mr. Ramsdell gave his horse the drug for allergies. He does not know how far out he gave the horse the drug. Penalty is harsh where it is his first one. AAG, Guay asked if anyone had questions of Mr. Ramsdell.

Commissioner McFarland asked where he got the drug. Mr. Ramsdell got it from his veterinarian. AAG, Guay closed the hearing on the penalty phase for deliberations. Commissioner Varney appointed Commissioner McFarland as pro tem. Commissioner McFarland asked for a motion. Commissioner Reed made a motion as recommended by the State for a 15 day suspension, \$500 fine and return of purse within 30 days. Commission Graham seconded. Vote 3-0.

#### 4. Appeal Hearing:

- a. **RE: Marc Mosher**, Mr. Mosher is appealing the decision of a Preliminary Denial of his 2014 application for licensing as a driver and trainer. Marc Mosher was present. AAG, Guay stated that William Childs was detained in court and was available by cell phone. Mr. Mosher wanted to go forward with the hearing. Mr. Jennings had no objection for Mr. Childs by phone. AAG, Guay stated that the reason we are here today is to consider Mr. Mosher's license application for a driver/trainer and the issue raised by the department is his fitness based on a criminal conviction and general fitness. AAG, Guay qualified the Commissioners. He asked Mr. Childs if he objects to him being the hearing officer. No objection by Mr. Childs. AAG, Guay stated that we are here on a remand from a case from the law court. He represented the Commission on the prior commission decision at the law court. Mr. Childs stated that in June of 2015 Mr. Jackson sent out a letter denying Mr. Mosher a license on a count of Mr. Mosher previously been convicted of a crime in 2016. AAG, Guay stated that it was stated under Title 5, MSR 5301 criminal conviction and Chapter 17, Section 3 1C when a person has displayed conduct found by the Commission to pose a significant threat to harness racing in Maine by threatening either the confidence of the wagering public or the health and welfare of Standard bred horses. Mr. Childs objects to those rules being entered. He also stated that the letter filed by Mr. Jackson in 2014 for the denial was improper because New York rescinded Mr. Mosher's application. AAG, Guay stated that Mr. Childs is opposing the 2015 preliminary denial that is not properly before the Commission. Mr. Jennings had no objections. AAG, Guay stated that there is a potential issue for an appeal if there's not an outcome satisfactory to Mr. Mosher. He stated that the first and second denial is no longer before them. In terms of the third preliminary denial, although he would agree that the commission did not have jurisdiction to decide the matter; certainly, there is nothing to preclude the agency in its enforcement role to take action. The theory there is if somebody is in court on a matter the agency wouldn't be able to take any further action against them. He disagrees with Mr. Childs' jurisdiction argument. That's why the decision was made. A timely appeal was filed in terms of that preliminary denial but the decision was to put off that appeal until the court returned jurisdiction back to the commission. AAG, Guay stated that if Mr. Mosher is granted his 2014 license he will still have to apply for a 2016 license and he has a hard time to see how the agency is precluded from raising the previous conviction in a new application; otherwise, once someone is given a license it's almost like that person's behavior prior to that license is never basis again for consideration of a license. He is not sure that's what the law says. Mr. Childs stated that you can take into account the 2006 criminal conviction if there was new evidence in addition to that and the entire lifetime record can be considered he thinks, but as a preliminary matter if he is issued a 2014 license then you're going to need to show he did something wrong since the issuance of that license to deny him a license thereafter. AAG, Guay stated that he would agree that if the department was to raise the New York denial at this point that's a dead issue, that's been fully adjudicated. The issue of the conviction has not been adjudicated. There was evidence taken but it was not in the notice of hearing.

Certainly, had he allowed for deliberations to occur on a basis that was not included in the notice of hearing one could argue that due process was not rendered to that individual because they went to the proceeding, and they ended up having to defend against charges that were not put in the notice of hearing. This was specifically precluded from the deliberations because it was not in the notice of hearing. Mr. Childs stated that it was the department's decision to include that or not include that. They do not get a do over. AAG, Guay stated that he ruled against Mr. Childs request because they are two separate basis. It's a separate basis that would disqualify if proven true for Mr. Mosher. For purposes of moving this hearing forward, he recognizes Mr. Childs objections. AAG, Guay asked Mr. Jennings if he objects to the proceedings this far. Mr. Jennings stated no. AAG, Guay stated that there were no stipulations. Mr. Jennings presented and moved for the admission of the following exhibits. Exhibit 1, Notice of Hearing (corrected 9/15/16); Exhibit 2, 2014 Driver/Trainer's License Application; Exhibit 3, Superior Court Decision and Order (6/17/15); Exhibit 4, Supreme Judicial Court Decision (7/12/16); Exhibit 5, Superior Court Remand to Commission (8/17/16); Exhibit 6, Decision and Order (9/29/14); Exhibit 7, Transcript from Hearing (8/14/14); Exhibit 8, Criminal History from NY; Exhibit 9, USTA Record (9/22/16); Exhibit 10, Title 5, Section 5301 & 5302-License; Exhibit 11, Excerpt 301 17 MSHRC Chapter 17, Section 3 and Exhibit 12, 2016 License Application. AAG, Guay admitted the 12 exhibits without objection from Mr. Childs. Mr. Childs had no exhibits. AAG, Guay stated that there were two preliminary denials of licenses for Mr. Mosher. Mr. Mosher appealed them and the Commission heard them. The law court told the Commission that they miss read the law and they cannot deny Mr. Mosher a license. Anything that had to do with the New York denial is irrelevant. Typically, for non-medical related occupational licenses the period of time that's considered is within three years. This case however, because the conduct that was the basis for the conviction had to do with the profession. The law says that can be considered at any time. The licensee has the burden of proving rehabilitation. The Commission's job today is to listen to testimony and make a determination whether or not Mr. Mosher has been sufficiently rehabilitated to warrant the public trust. Mr. Childs disagrees with the procedure that they are going to follow today. He called Mr. Mosher to testify. AAG, Guay gave Mr. Mosher his oath. Mr. Childs asked questions of Mr. Mosher. Mr. Mosher stated that in 2006 he was convicted of a misdemeanor charge and he pleaded guilty. He was fined \$200.00. He has not had any criminal convictions since 2006. He is licensed in Pennsylvania and California and his license is pending in Florida. He currently holds a driver/trainer in both states and he has a conditional license in Pennsylvania. He is seeking an owner/driver/trainer's license for Maine. Mr. Mosher also stated that he is a member of the USTA as a Rule 1 Section 3 membership. He would like to move forward and obey the rules in the State of Maine. Commissioners asked questions of Mr. Mosher. Mr. Mosher stated that he does have a conditional license with Canada. He has held a license in Pennsylvania since 2012. He stated that he had a criminal conviction in 2001 for failure to report a death of a horse. He received a 2 year suspension in New York. AAG, Guay asked Mr. Childs if he had any other witness. Mr. Childs stated yes, Mr. Spinney. AAG, Guay gave Mr. Spinney his oath. Mr. Childs asked questions to Mr. Spinney. Mr. Spinney went to school with Mr. Mosher. They raced horses together. He thinks Mr. Mosher deserves another chance. AAG, Guay asked Mr. Jennings if he had a witness. Mr. Jennings called Mr. Mosher. He asked Mr. Mosher if he could explain the violations on the USTA records sheet. Mr. Mosher stated that on page 2 of exhibit 9 he was fined \$500 for using banamine in a qualifying race. AAG, Guay asked if there were any other witnesses. Mr. Jennings stated no. Mr. Childs stated that since 2012 they

have learned that banimine stays in the horses system longer than they thought. He is objecting to the banimine as he did to the 2006 criminal conviction to deny Mr. Mosher a license. He asked the Commission to consider giving Mr. Mosher an occupational license so that he can return to Maine. AAG, Guay asked Mr. Jennings if he had a closing argument. Mr. Jennings stated that the states position does revolve around Title 5, Section 5302 for disciplinary action. The Commission needs to determine based on that section whether the applicant has been sufficiently rehabilitated to warrant the public trust. The department isn't taking a position one way or another. AAG, Guay closed the hearing for deliberations. He stated to the Commissioners that the first question you might want to ask yourself is if you can consider actions from 2001 and 2006 or either or both on whether or not it is relevant and the second question would be whether or not he is rehabilitated. AAG, Guay stated that he would supplement the record to include the 2015 Preliminary Denial and mark as Joint Exhibit #1. Mr. Childs question was whether or not it is specific to 2001 violation. AAG, Guay stated that it does not mention either 2001 or 2006. The Commissioners deliberated. Commissioner Varney and Commissioner Graham stated that the 2001 conviction bothers them a lot. He would consider a conditional license. Commissioner Reed stated that he would consider and support a conditional license for a term of one year and Mr. Mosher not incur any criminal or civil violations during that period. Commissioner McFarland concurred with Commission Reed with a 2 year conditional license. Commissioner McFarland made a motion that they give Marc Mosher a conditional license for two years and that he not have any convictions of harness racing violations and/or criminal violations over that period of time. Commissioner Graham seconded. AAG, Guay stated that he is not sure that you could state any criminal convictions because the Maine Statute specifies what convictions are allowable. He also asked if this would include driving violations that are currently in the rules. All Commissioners agreed that all driving violations do not apply. Commissioner Varney asked for a vote. Vote 4-0. Mr. Childs asked if the license is for conditional license for 2016 and it starts today. AAG, Guay stated yes and the appeal process will be when Mr. Mosher receives the decision and order.

## **5. Other Business**

- a.** Request from the Maine Harness Horsemen's Association regarding funding for the Economic Impact Study. Linwood Higgins represented the MHHA. He handed out a letter concerning the overall issues that involve racing. Commissioner Varney asked how much this would cost to have the study done. Mr. Higgins stated it would be \$20,000. Don Marean cautioned them to be careful of how we are going to get the money and where we are going to spend it because there are those there at the Legislature who are going to be really looking at it in this coming session. AAG, Guay stated that in Title 8, Chapter 11, Section 263-B list the department responsibilities. It seems to him that what is being described to him squarely fits within that responsibility. The department could in fact allocate money out of its budget for this purpose. Mr. Higgins stated that maybe at the next meeting we can have something more formal. AAG, Guay stated that some of the remaining items contained in this letter could be brought before the Commission in an adjudicatory proceeding. He recommends that this letter not be retained by the Commissioners and not read past the economic impact study. The letter was collected from the Commissioners and returned to Mr. Higgins. Commissioner Varney stated that he would like Mr. Jennings to investigate ways to fund this study and work with the MHHA and the MSBOA and report back at the next meeting.

**b. Ongoing Discussion of Rule Amendments**

Mr. Jennings stated that he is filing Chapter 11 without a hearing and the written comment period will be November 4, 2016. He has received other comments from constituents as well as Ms. Perkins. AAG, Guay stated to Mr. Jennings that you can receive emails from Commissioners individually but you cannot share the comments from other Commission members.

**6. Public Comment**

Ms. Perkins stated that the mares bred list was due September 1, 2016. Not everyone has reported. She also stated that the 3 year old finals will be held at Scarborough Downs on October 15, 2016.

**7. Schedule of Future Meetings:**

October 13, 2016 and October 21, 2016

November 18, 2016

December 8, 2016

**8. Adjourn**

1:00 p.m.